

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**CITY OF MONROE,**

Plaintiff/Appellant,

v.

**HELEN FAITH JONES,**

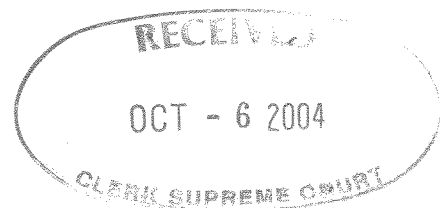
Defendant/Appellee

Supreme Court Case No: 125289  
Court of Appeals No: 241486  
Circuit Court Case No: 01-13988-AV

**THE ABILITY CENTER OF GREATER TOLEDO MEMORANDUM OF LAW  
AS AMICUS CURIAE**

The Ability Center of Greater Toledo, by its undersigned counsel, submits this  
Memorandum of Law as amicus curiae.

**THOMAS J. ZRAIK** (Atty. Reg. No. 0023099)  
Attorney for The Ability Center of Greater Toledo, as  
Amicus Curiae  
5579 Monroe Street  
Sylvania, Ohio 43560  
(419) 882-2559



## **I. JURISDICTION OF COURT**

The statement of the jurisdiction of this court by Appellant, the City of Monroe, is complete and correct.

## **II. INTERESTS OF AMICUS CURIAE**

The Ability Center of Greater Toledo (hereinafter the “Ability Center” or “ACT”) is a nonprofit independent living center located in northwest Ohio, serving persons with disabilities and their families who reside or work in southeast Michigan and throughout northwest Ohio. As an independent living center, ACT is funded in part under provisions of the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., and is mandated to provide advocacy for individuals with disabilities, as well as other services necessary to enhance opportunities for independent living for persons with disabilities within their communities. These services routinely include peer counseling and advocacy in areas such as employment, housing, education, transportation, health, and access to government benefits. A board of trustees, more than half of whom are individuals with disabilities, controls the Ability Center. The Ability Center employs approximately thirty-five individuals, most of whom are individuals with disabilities. The agency’s central offices are located in Sylvania, Ohio, with satellite offices located in both Port Clinton and Defiance, Ohio. According to recent estimates, ACT serves approximately 3000 individuals with disabilities and their families each year. Many of these individuals, such as the Appellee, Helen Jones, either work or reside in southeast Michigan.

The employment of individuals with disabilities is a key purpose in the Ability Center's mission. Employment services provided by ACT include technical assistance to prospective employers, as it relates to creating accessible work environments and provision of reasonable accommodations, as well as peer-counseling for individuals with disabilities. Congressional intent in promoting the employment of individuals with disabilities is clear in the stated purposes of the Rehabilitation Act of 1973, as well as the Americans with Disabilities Act of 1992, 42 U.S.C. 12101 *et seq.*, and clearly reflected in Michigan state law found in M.C.L.A. Chapter 37.

Advocacy on behalf of individuals with disabilities in the areas mentioned above is another activity consistent with the mandates of the independent living programs set forth in the Rehabilitation Act of 1973 and ACT's mission. ACT has been a party in several court cases such as *The Ability Center of Greater Toledo et al, v. City of Sandusky et al*, 181 F. Supp. 2d 797, 23 NDLR P 122, N.D. Ohio, Dec. 26, 2001.<sup>1</sup>

Plaintiff-Appellee Helen Jones is an individual with a disability who is employed in southeast Michigan, but resides only minutes away in her home in Toledo, Ohio. The Ability Center has taken interest in the present case because Mrs. Jones's continued employment is consistent with ACT's mission of full inclusion of persons with disabilities into society and, in particular, in competitive employment.

Amicus's interest here is twofold. First, to ensure that the State of Michigan's intent in enacting M.C.L.A. 257.675(6) is not frustrated by reversal of the holding of the Court of Appeals. Secondly, it is properly within the mission of the Ability Center to

counsel and to advocate for its members who live, work and/or socialize in Michigan. As set forth below, ACT believes the District and Circuit Court opinions in the instant case were completely wrong and inconsistent with settled cases from the Michigan Supreme Court in similar preemption cases. In addition, any decision that effectively nullifies M.C.L.A. 257-675(6) would be contrary to the legislative intent of the statute. Thus, the Ability Center strongly urges this court to deny Appellant's Application for Appeal. In the alternative, in the event Appellant's Application should be accepted, ACT then urges affirmation of the decision of the Court of Appeals.

### III. ISSUE

Will reversal of the holding by the Court of Appeals in the instant case result in the creation of policy and procedural barriers to persons with disabilities to secure the goods and services provided by the State of Michigan, and other places of public accommodations, contrary to the intent of the legislature as expressed in the letter and spirit of applicable federal law, in general, and, in particular, the Michigan Handicapper Statute?

ACT agrees with Appellee's position that this court should not accept jurisdiction to hear the City's appeal of the lower court's decision in the instant case because there is no issue of great public importance that would affect Michigan's jurisprudence as required by MCR 7.302(B)(3). However, ACT is concerned reversal of the Court of Appeals decision in this case would initiate a negative inertia by the City of Monroe and other Michigan cities to roll back the progress made by critical statutes in achieving true

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<sup>1</sup> *The Ability Center of Greater Toledo et al, v. City of Sandusky* is currently in the Sixth Circuit Court of

inclusion for all citizens, especially those with disabilities, with a predictable return to uninhibited creation of barriers to employment and social interaction, contrary to Michigan and federal law.

#### **IV. ARGUMENT**

##### Issue One

Will reversal of the holding by the Court of Appeals in the instant case result in the creation of policy and procedural barriers to persons with disabilities to secure the goods and services provided by the State of Michigan and other places of public accommodations, contrary to the intent of the legislature as expressed by the letter and spirit of applicable federal law and in particular the Michigan Handicappers Statute?

In their Application for Appeal, Appellants assert that the instant case presents significant issues that will affect Michigan State jurisprudence. As Appellee makes clear, the City's reliance on such an unfounded assertion is completely without merit. The Ability Center incorporates by reference herein the arguments set forth in Appellee's Brief in Opposition on this issue, which Amicus believes accurately reflect the correct legal principles of Michigan jurisprudence, and which ACT need not expound upon further.

Appellant however, wishes to support its contention that the issue presented for consideration in this appeal is significant by using hyperbole to suggest that the holding of the court of appeals "effectively" grants an unlimited pass to persons with disabilities in municipal parking, stating: "[t]he effect of the Court of Appeals' decision is to nullify

all local parking ordinances to the extent that they are applicable to disabled individuals.” City of Monroe’s Application for Leave to Appeal, pg. 1 (Dec. 16, 2003). Of course, as Appellee has countered in her brief in opposition, Appellant’s fears are ill founded. Appellee’s Brief in Opposition to Application for Appeal, at page 10-11. ACT and its members, however, ask this court to consider the effect of a reversal of the holding of the court of appeals would have upon persons with disabilities that live, work or socialize in the State of Michigan. The City of Monroe asserts that the City’s ordinance supersedes the protection afforded to disabled drivers by M.C.L.A. 257-675(6). If so, however, Appellee rightfully asks just what protection would remain for disabled individuals anywhere in Michigan if, in fact, the City’s ordinance is found to trump the motor vehicle code’s courtesy to disabled drivers. The obvious answer to that question is that other Michigan cities currently extending the courtesy provided under M.C.L. A. 257-675(6), would be encouraged to reinstate barriers to transportation as the Appellant is attempting to do through this litigation. The result of any such rollback will have a significant effect upon the Appellee, Ms Jones, and others who are similarly situated. In addition to paying hefty fines for parking violations, individuals with disabilities may very likely lose employment opportunities, as well as social opportunities to eat in restaurants or shop in downtown stores. When considering the effect of extending such results beyond the City of Monroe to the entire state of Michigan, as it relates to individuals with mobility impairments similar to the Appellee, the potential negative outcome of the City’s position is staggering. According the U.S. Census Bureau 2000 figures, there are more than 2 million individuals with disabilities residing in Michigan. See U.S. Census Bureau 2000

54.8% disabled individuals 21 – 64 years of age are employed, compared to 77.9% of non-disabled population. Therefore, it is fair to say that these individuals rely on, and take advantage of, the accommodations provided to them by the State of Michigan through the M.C.L.A. 257-675(6).

As Appellee has pointed out, the intent of the legislature in enacting the M.C.L.A. is clear and unambiguous. See Brief in Opposition, p. 11. The legislature intended that individuals with disabilities or their drivers not be subject to penalties imposed by local municipalities, with the limited exceptions expressly specified in the statute, for parking their vehicles in authorized locations. Certainly, the legislature was aware of and considered the effects of this legislation on the authority of local municipalities to regulate parking, given the fact that the statute has been amended no less than eleven times without any change in the language currently found at M.C.L.A. 257-675 (6).

Moreover, such a view is in keeping with the Michigan Persons With Disabilities Civil Rights Act (“PWDCRA”) M.C.L.A. 37.1101 *et seq.*, which affords individuals with disabilities rights that parallel those provided in their federal counterparts, i.e. the Rehabilitation Act of 1973, 20 U.S.C. 794 *et seq.* and its implementing regulations, as well as the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12101 *et seq.*, and its implementing regulations at 28 C.F.R. parts 35 and 36, both of which apply to state and local governing entities. The PWDCRA, formerly the Michigan Handicappers Civil Rights Act, M.C.L.A. 37.1101, amended December 1996, ensures that the State of Michigan provides equal opportunities to all minorities, including individuals with disabilities, in domains such as employment and housing, as well as in access to the goods and services of places of public accommodation. See *Stevens v. Inland Waters*,

*Inc.* (1996) 559 N/W. 2d 61, 220 Mich. App. 212, appeal denied 568 N.W.2d 682 (Purpose of the Handicappers' Civil Rights Act is to ensure that all persons have equal opportunities to obtain employment, housing, and utilization of public accommodations, services, and facilities.)

Amicus asserts that when M.C.L.A. 257.675(6) is read together with M.C.L.A. 37.1101 *et seq.*, the intent of the Michigan Legislature is clear, i.e. to ensure that persons with disabilities who live, work, and recreate in the state are provided with equal opportunities to access the goods and participate in the services offered to all citizens. M.C.L.A. 257.675 (6) serves to ensure that such equal opportunities are provided. The record in this case establishes that annulment of M.C.L.A. 257.675(6) by this court would effectively deny Appellee the equal opportunity to productive employment because she will be denied the availability of a barrier-free parking space.

Similarly, other individuals with disabilities who rely on M.C.L.A. 257.675(6) will likely be as negatively impacted. According to the latest census figures available, there are well over five million individuals living in Michigan between the ages of 21 and 64, including 1,017,943 persons with disabilities. The percent of the non-disabled population who are employed is 77.9 %, compared to only 54.8 % of the disabled population who are employed. These figures are of course minimal estimates because they do not include any of the population between the ages of 5 and 20, or over 64 years of age, many of whom are likely to be driving and/or working. Thus, in light of the effect any rescission or roll back of M.C.L.A. 257.675(6) by this court would have upon individuals with disabilities, this court should deny Appellant's Application for Appeal and affirm the Court of appeals.



## V. CONCLUSION

For all the reasons stated above, Amicus Curiae, the Ability Center of Greater Toledo, respectfully requests this court to grant Appellee's request to deny Appellant's Application for Appeal in the instant case and, alternatively, if this Court determines that such Application is to be granted, then to affirm the Court of Appeals decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas J. Zraik', with a stylized flourish at the end.

Thomas J. Zraik Esq.  
Attorney for Amicus Curiae, Ability Center of Greater Toledo